HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.264 of 2006

Between:

Vasireddy Ravindranath … Appellant

And

Commissioner for Prohibition and

Excise, Government of Andhra Pradesh

Hyderabad and others. … Respondents

::JUDGMENT::

Counsel for the appellant Sri O.Manoher Reddy

Counsel for respondents

1 to 3: Government Pleader for

Prohibition & Excise.

Counsel for Respondent No.4: Sri G.V.S.Mehar Kumar

March 14, 2006

Per G.S. Singhvi, CJ

Feeling aggrieved by the refusal of the learned Single Judge to entertain his prayer for quashing proceedings dated December 2, 2005 vide which Prohibition and Excise Superintendent, Khammam (respondent No.2) granted licence to respondent No.4 – B.Venkataramana to run liquor shop in premises bearing Door No. 1-198, the appellant has filed this appeal.

The factual matrix of the case lies in a narrow compass. In the auction held in May/June, 2005, respondent No.4 gave highest bid for a shop in Ward No.2 of Madhira village, Khammam District. He applied for permission to open shop in the premises bearing Door No. 1-198, Main Road, Madhira. Respondent No.2 rejected his application on the ground that the premises falls in Ward No.1 for which licence had already been granted to the appellant. This was done on the basis of certificate dated June 10, 2005 issued by Secretary, Gram Panchayat, Madhira. Immediately thereafter, respondent No.4 submitted a representation to Commissioner of Prohibition and Excise, Andhra Pradesh (respondent No.1) for permission to open the shop in premises bearing Door No. 1-198. Along with the representation, he enclosed certificate dated June 29, 2005 issued by Secretary, Madhira Gram Panchat which depicted that the premises falls in Ward No.2. However, no action was taken on the representation of respondent No.4. He then filed Writ Petition No. 14987 of 2005. The same was disposed of by the learned Single Judge on July 9, 2005 with a direction to respondent No.1 to consider his representation and pass appropriate order within a period of one month.

Thereafter, respondent No.2 sought clarification from District Panchayat Officer, Khammam in view of the contradictory certificate issued by Secretary of the Gram Panchayat. The District Panchayat Officer vide his order dated September 5, 2005 appointed Divisional Panchayat Officer, Khammam to enquire into the matter. The latter submitted report dated September 26, 2005 with the finding that Door No. 1-198 falls in Ward No.2. Thereafter, at the initiation of respondent No.1, a meeting of District Panchayat Officer, Khammam and respondent No.2 was held on November 21, 2005. The former explained that as per the Panchayat Act and Rules, ward

means territorial jurisdiction of elected ward member and the premises in question falls within Ward No.2. He also expressed the view that the initial certificate issued by the Secretary of the Gram Panchayat was erroneous. Thereafter, respondent No.2 granted licence to respondent No.4 for running the shop in premises bearing Door No. 1-198.

The appellant challenged the grant of licence to respondent No.4 in Writ Petition No. 26600 of 2005 by contending that the premises bearing Door No. 1-198 actually falls within Ward No.1. He pleaded that in terms of the notification issued by Collector and District Magistrate, Khammam for auction of the shops, the highest bidder could be granted licence in the revenue wards, but in complete disregard of the notification, respondent No.2 granted licence to respondent No.4 for operating the shop in an area which falls in Ward No.1. It was also pleaded that the authorities have adopted different yardstick for determination of the area of the ward and, therefore, the licence granted to respondent No.4 for operating the shop in Door No. 1-198 should be quashed.

In the counter-affidavit filed on behalf of the official respondents, it was pleaded that location of the premises was decided after thorough enquiry. It was further pleaded that even though the application of respondent No.4 was rejected in the first instance, but, on a reconsideration of the matter, it was found that the premises falls in Ward No.2 and, therefore, licence was granted to respondent No.4 to run the shop in the disputed premises.

Learned Single Judge dismissed the writ petition by observing that the notification inviting tenders did not contemplate taking into consideration of panchayat wards for fixing the area/locality and, as the licence was granted to respondent No.4 after clarification from District Panchayat Officer, Khammam, there was no valid ground to nullify the same.

Sri O.Manohar Reddy, learned counsel for the appellant reiterated his client's challenge to the grant of licence to respondent No.4 to operate shop in premises

bearing Door No. 1-198 by arguing that the decision of respondent No.2 is vitiated by a patent illegality, inasmuch as the premises in question actually falls in Ward No.1 where his client is entitled to operate a shop in terms of the licence granted by the competent authority. Learned counsel further argued that licences have been granted to other bidders as per the revenue wards, but in the case of respondent No.4 the elective Ward has been taken into consideration and this is clearly indicative of the discrimination practiced by the official respondents.

We have given serious thought to the argument of the learned counsel for the appellant and carefully perused the record. In our opinion, the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the grant of licence to respondent No.4 to operate shop in the premises bearing Door No. 1-198. Admittedly, licence was granted to respondent No.4 after an enquiry was got conducted by the District Panahcyat Officer in the matter of issuance of contradictory certificate by Secretary of the Gram Panchayat. Divisional Panchayat Officer who conducted enquiry recorded a categorical finding that the premises in question fall in Ward No.2 as per the ward member area. His report was accepted by the District Panchayat Officer, District Collector and respondent No.2. The notification issued by Collector and District Magistrate, Khammam for auction of the shop did not contemplate grant of licence as per the revenue ward. Therefore, the consideration of the elective ward has the criteria for grant of licence to respondent No.4 cannot be termed as illegal or violative of Article 14 of the Constitution.

We are further of the view that the question relating to exact location of premises bearing Door No. 1-198 is essentially a question of fact and the same cannot be determined by the High Court in exercise of its power under Article 226 of the Constitution of India. The only remedy available for determination of such contentious issue is by way of civil suit.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

G.BHAVANI PRASAD, J

March 14, 2006

ARS/GRR